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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/476,490	12/30/1999	LINDSAY S. MACHAN	110129.411	7911
41551 7590 10/01/2009 SEED INTELLECTUAL PROPERTY LAW GROUP PLLC 701 FIFTH AVENUE, SUITE 5400 SEATTLE, WA 98104-7092				
EXAMINER TYSON, MELANIE RUANO				
ART UNIT 3773		PAPER NUMBER		
MAIL DATE 10/01/2009		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: LINDSAY MACHAN, JOHN JACKSON and WILLIAM
HUNTER

Appeal 2009-012146
Application No. 09/476,490
Technology Center 3700

Mailed: September 30, 2009

Before DALE M. SHAW *Chief Appeals Administrator*

ORDER REMANDING TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on June 16, 2009. A Docketing Notice was mailed and Appeal No. 2009-012146 was assigned on June 25, 2009. A review of the application has revealed that the application was not ready for

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Appeal No. 2009-012146

an appeal. Accordingly, the application is herewith being remanded to the Examiner to address the following matter requiring attention prior to docketing.

APPEAL BRIEF

Appellant filed an Appeal Brief dated October 28, 2008. The Appeal Brief is not in compliance with 37 CFR § 41.37(c) effective September 13, 2004.

37 CFR § 41.37(c)(1)(ix) states:

***>(ix) Evidence appendix.* An appendix containing copies of any evidence submitted pursuant to 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See 37 CFR 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal. The appendix should start on a new page. If there is no evidence being relied upon by appellant in the appeal, then an evidence appendix should be included with the indication “none.”

Specifically, an examination of the application reveals that the “Evidence Appendix” section of the Appeal Brief lists evidence that does not include a statement setting forth where in the record the evidence was entered by the Examiner.

A correction of the Appendix is required as indicated above.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

1) notify the Appellant to submit a “paper” (not entire brief) which corrects the Appeal Brief’s Evidence Appendix section;

2) acknowledge and consider any “paper” that may be submitted by the Appellant in response to the Notice of Non-Compliance to correct the Appeal Brief as required by 37 CFR § 41.37 (c)(1)(ix); and

3) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

DS/tsj

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